perty, both residential and commercial, all of which are subjects taught in the Practice Law Course. There was no question of the Board having "misunderstood or being ignorant of an established and relevant fact" since the applicant had never established that fact.

By way of a postscript, I should add that the contents of the application reflected a certain degree of confusion on the part of the applicant. As worded, it called for review of (a) the applicant's interpretation of the Board's letter of November 8, 1986 (which could not be a subject matter for review) and (b) the Board's letter of September 17, 1987 (which merely set out the reason for its decision and not the decision itself which was given in its letter of August 26, 1987). On the face of the application, there was nothing for the court to review. This confusion as to the subject matter for review would probably have accounted for the absence of any specific relief being prayed for in the application and the applicant's failure to ask for any relief at the hearing itself. The nature of the relief sought would be relevant to whether the court has the power, and if it has, whether it would grant the relief. For example, if the relief sought were merely a declaration that the decision of the Board made on August 26, 1987 was wrong, such a declaration would not assist the applicant as he would still not have been given an exemption from the Board. In that situation, it would have been more appropriate for the applicant to make a fresh application, with supporting evidence, to the Board for exemption from passing the Practice Law Course on the ground that he had sufficient experience in or knowledge of areas of law corresponding to areas of law that would be expected of a Singapore practitioner.

Order accordingly.

Solicitors: *Oehlers & Choa; Assomull & Partners.*

RE H.E. CASHIN, AN ADVOCATE AND SOLICITOR

[O.C.J. (Wee Chong Jin C.J., Lai Kew Chai & Chua JJ.) December 2, 1987]

[Singapore – Originating Summons No. 506 of 1987]

Legal Profession – Accounts – Payment of money into client's account – Contrary to Solicitors' Accounts Rules 1967 – Whether wilful ignorance of the rules – What is the appropriate penalty – Importance of observing the rules and practice in the legal profession – Solicitors' Accounts Rules 1967, rr. 4, 5 & 6 – Legal Profession Act (Cap. 161), ss. 80, 93 & 95.

This was an application under section 95 of the Legal Profession Act for the respondent, H.E. Cashin, an advocate and solicitor, to show cause before a court of three judges as to why he should not be dealt with under section 80 of the Legal Profession Act.

The present proceedings arose out of a complaint lodged by one P. Suppiah, also an advocate and solicitor. The facts were that the respondent had deposited a certain sum of money in his firm's client account contrary to the Solicitors' Accounts Rules 1967 (now Solicitors' Accounts Rules 1985). On December 4, 1986, a Disciplinary Committee was appointed pursuant to a court order to deal with the complaint.

The Disciplinary Committee rejected the respondent's claims and decided that the respondent was guilty of statutory misconduct under section 80(2)(j) of the Legal Profession Act in that he had contravened or failed to comply with rule 6 of the Solicitors' Accounts Rules 1967 and that cause of sufficient gravity existed for disciplinary action under section 80.

Held: (1) this court disagreed with the finding by the Disciplinary Committee that there was a wilful disregard of the provisions of rule 6. There was no admission by or on behalf of the respondent that he had wilfully disregarded the provisions of that rule. Ignorance of the law is no excuse, but that does not make every breach of the law a wilful one. What a person knows and what he ought to know are quite different matters. While every practising solicitor ought to know the requirements of rule 6, the distinction between actual knowledge and constructive knowledge must be clearly appreciated, as it would affect the seriousness of the contravention and hence the kind of penalty that ought to be imposed;

(2) in the circumstances of the case, the Disciplinary Committee was wrong to draw the inference from the admitted facts and the respondent's admission that he had contravened rule 6 that the contravention was wilful. Nevertheless, having regard to the fact that the Solicitors' Accounts Rules 1967 were rules which every practising solicitor ought to know, and the fact that the respondent, a senior advocate and solicitor, was in practice for many years before and after the promulgation of the rules, his contravention, in the court's opinion, warranted disciplinary action and the imposition of a penalty;

(3) the respondent should be censured.

ORIGINATING SUMMONS.

Antony Cripps Q.C. (*Karuppan Chettiar* with him) for the respondent.

Mak Kok Weng for the complainant.

Cur. Adv. Vult.

Wee Chong Jin C.J. (delivering the judgment of the court): This is an application under section 95 of the Legal Profession Act for the respondent, Howard E. Cashin, an advocate and solicitor, to show cause before a court of three judges why he should not be dealt with under section 80 of that Act. We will refer to all statutory provisions as they now appear in the 1985 Edition of the statutes.

History of the proceedings

These proceedings first arose from a complaint by P. Suppiah, also an advocate and solicitor, contained in a letter dated December 22, 1983 to the Executive Secretary of the Law Society of Singapore. Certain events then took place. These events are set out clearly in the judgment of the Court of Appeal [1986] 1 M.L.J. 459, and we need not repeat them here.

Following from the order of the Court of Appeal, the Inquiry Committee inquired into the complaint and recommended that it be dismissed. The Council of the Law Society accepted the recommendation and determined accordingly.

The complainant then took out Originating Summons No. 1394 of 1985 under section 93 of the Legal Profession Act against the Law Society. On October 29, 1986, P. Coomaraswamy J. ordered as follows:

"(a) that the determination of the Council of the Law Society on all matters subject of the plaintiff's application dated December 22, 1983 to the Society, other than that relating to the payment of cheque dated April 7, 1976 for $20,000.00 into Murphy & Dunbar's client's account, be affirmed;

(b) the Law Society is hereby directed to apply to the Honourable Chief Justice for the appointment of a Disciplinary Committee to hear, determine and report upon the payment into one of Murphy & Dunbar's clients' accounts of the said cheque, and

(c) that there be liberty to apply."

On December 4, 1986, a Disciplinary Committee was appointed. Pursuant to section 93(5) of the Act, the complainant "shall have the conduct of proceedings before the Disciplinary Committee and any subsequent proceedings before the court under section 95, and any such proceedings shall be brought in the name of the applicant".

The facts

The case against the respondent, as succinctly put by the Disciplinary Committee, was as follows:

"Sometime in 1979 P. Suppiah the applicant who is also the complainant in this matter was instructed by one Nathan to recover from the respondent certain sums of money lent by him to the respondent. One such sum was of $20,000 lent by an 'Account Payee only' cheque dated April 7, 1976 bearing No. AA421507 drawn by Nathan for $20,000 on Banque National de Paris and made in favour of H. E. Cashin, the respondent who having had the same marked on April 8, 1976 ordered it to be paid into Murphy & Dunbar's client account (new) with the HongKong & Shanghai Banking Corporation, Singapore.

By reason of the matters aforesaid, the respondent is alleged to have contravened or failed to comply with rule 6 of the Solicitors' Accounts Rules 1967 now repealed and re-enacted as the Solicitors' Accounts Rules 1985 and such contravention or non-compliance it is alleged warrants disciplinary action under section 84(2)(j) of the Legal Profession Act (Cap. 217)."

Section 84(2)(j) is now renumbered section 80(2)(j).

The relevant provisions of the Solicitors' Accounts Rules 1967, which were the applicable rules at the material time, read:

"4. There may be paid into a client account –

(a) trust money;

(b) such money belonging to the solicitor as may be necessary for the purpose of opening or maintaining the account;

(c) money to replace any sums which may by mistake or accident have been drawn from the account in contravention of sub-rule (2) of rule 8 of these Rules; and

(d) a cheque or draft received by the solicitor, which under rule 5 of these Rules he is entitled to split but which he does not split.

5. Where a solicitor holds or receives a cheque or draft which includes client's money or trust money of one or more trusts –

(a) he may where practicable split such cheque or draft and, if he does so, he shall deal with each part thereof as if he had received a separate cheque or draft in respect of that part; or

(b) if he does not split the cheque or draft, he shall, if any part thereof consists of client's money, and may, in any case, pay the cheque or draft into a client account.

6. No money other than money which under the foregoing Rules a solicitor is required or permitted to pay into a client account shall be paid into a client account."

It transpired that after the cheque for $20,000 was deposited in the Murphy & Dunbar's client account (new), the respondent drew cheques on the said account in payment of his personal bills. It was also evident that in July 1976, almost three months after the cheque for $20,000 was deposited, another $3,300 was deposited in that account and drawn on. It was only in February 1977 that the balance of the money remaining in that account was withdrawn. However, all these were recorded in a separate ledger.

At the very first meeting held by the Disciplinary Committee, the respondent conceded that he had absolutely no defence to the "charge". In mitigation, the respondent's solicitors submitted that it was a technical mistake and that no client had lost any money as a result of that mistake. The respondent's stand was that he was ignorant of the Solicitors' Accounts Rules 1967. When asked by the Disciplinary Committee to explain why the $20,000 cheque made out in his name was endorsed by him and paid into the clients' account of Murphy & Dunbar, the respondent's answer (not on oath or affirmation) was:

"I have already explained in the complaint. I realized now that when I looked at the Rules, I should not have done it. Having used the money from time to time for various matters, the late Mr Dunbar told me it was wrong. I then withdrew it. It was my mistake."

The determination of the Disciplinary Committee

Despite the respondent's explanation which appears to stand unchallenged on the admitted facts, the Disciplinary Committee "found it difficult to accept that the respondent, a solicitor of over 25 years' standing at the material time, was unaware of the existence of rule 6 of the Solicitors' Accounts Rules 1967." The Disciplinary Committee rejected the respondent's claim that he did not know he could not put his own money in the firm's clients' account and found that "it was not an honest or innocent mistake". It said: "In the opinion of the Committee the respondent was not speaking the truth".

On those findings the Disciplinary Committee determined that the respondent was guilty of statutory misconduct under section 80(2)(j) of the Legal Profession Act in that he had contravened or failed to comply with rule 6 of the Solicitors' Accounts Rules 1967 and that cause of sufficient gravity for disciplinary action under section 80 existed.

Our decision

Mr. Cripps, on behalf of the respondent, concedes that the respondent had contravened rule 6 of the Solicitors' Account Rules 1967 but he submits that the Disciplinary Committee's finding that the respondent was aware of the existence of rule 6 of the Solicitors' Account Rules when he placed this $20,000 in the clients' account of the firm could not be supported. We accepted Mr. Cripp's submission. The respondent's stand had consistently been one of ignorance, at all material times, of the Solicitors' Accounts Rules 1967. With respect, we disagree with the finding by the Disciplinary Committee that it was a wilful disregard of the provisions of rule 6. There was no admission by or on behalf of the respondent that he had wilfully disregarded the provisions of that rule. Ignorance of the law is no excuse, but that does not make every breach of the law a wilful one. What a person knows and what he ought to know are quite different matters. While every practising solicitor ought to know of the requirements of rule 6, the distinction between actual knowledge and constructive knowledge must be clearly appreciated, as it would affect the seriousness of the contravention and hence the kind of penalty that ought to be imposed.

It is to be observed that the charge against the respondent was that he had contravened or failed to comply with rule 6 of the Solicitors' Account Rules 1967 (now re-enacted as the Solicitor's Account Rules 1985). There was no allegation that the contravention or failure was wilful. We were of the opinion, in these circumstances, that the Disciplinary Committee was wrong to draw the inference from the admitted facts and the respondent's admission that he had contravened rule 6 that the contravention was wilful. Nevertheless, having regard to the fact that the Solicitors' Account Rules 1967 were rules which every practising solicitor ought to know, and the fact that the respondent, a senior advocate and solicitor, was in practice for many years before and after the promulgation of the Rules, his contravention, in our

opinion, warranted disciplinary action and the imposition of a penalty.

Under section 80 of the Legal Profession Act, we could impose one of three penalties:

(a) strike the respondent off the roll of advocates and solicitors;

(b) suspend him from practice for any period not exceeding two years; or

(c) censure him.

In the circumstances of this case, we were of the opinion that to impose on the respondent either of the first two penalties would be unduly harsh. Accordingly, we ordered that the respondent be censured.

We would emphasize that a contravention or failure to comply with any of the provisions of the Act or of any rules made thereunder which warrants disciplinary action could, in an appropriate case, attract a penalty more severe than that of censure. It is incumbent upon all practising advocates and solicitors to keep themselves apprised of the provisions of the Act and Rules made thereunder, particularly those provisions and rules which govern the practice of the profession.

Order accordingly.

Solicitors: *Murphy & Dunbar; Mak & Partners.*

PUBLIC PROSECUTOR v. LAU CHI SING

[O.Cr.J. (Lai Kew Chai & Thean JJ.) November 25, 1987]

[Singapore – Criminal Case No. 29 of 1985]

Criminal Law – Misuse of drugs – Drug trafficking – "Trafficking" and "Transport" – Meaning of – Misuse of Drugs Act (Cap. 185), s. 2, 5, 17 & 18.

The accused was charged with having trafficked in controlled drugs by transporting 242.85 grammes of diamorphine from Ghim Peng Hotel in Geylang to Singapore Changi Airport.

The defence of the accused was that he believed he was transporting only certain jewellery and not drugs. These items which he thought he was having were allegedly given to him by another man.

Held: (1) following *Ong Ah Chuan* v. *Public Prosecutor*,[2] the test for determining whether an act of transporting drugs from one point to another falls within the meaning of "transport" in section 2 is the purpose for which the drugs are being transported. If the drugs are transported for the purpose of distributing or giving them to one or more persons, known or in contemplation, at the intended destination then that act of transporting falls within the statutory meaning and is an act of trafficking; if, on the other hand, the purpose is for the transporter's own consumption, such act of transporting is not trafficking within the meaning of section 2;

(2) so long as the drugs are transported for the purpose of distribution, it is immaterial whether the intended distribution takes place here, or abroad. Logically, it must follow that such a mover commits the offence immediately after he has begun his journey of moving the drugs, irrespective whether he reaches his destination or not; it is the act of transporting drugs for the purpose of distribution which is one of the evils against which section 5 is directed;

(3) the accused had not rebutted the presumptions by any credible evidence and the accused was convicted.

Cases referred to:

(1) *Wong Kee Chin* v. *Public Prosecutor* [1979] 1 M.L.J. 157.

(2) *Ong Ah Chuan* v. *Public Prosecutor* [1981] 1 M.L.J. 64.

CRIMINAL TRIAL.

Ismail Hamid (Deputy Public Prosecutor) for the Public Prosecutor.

Joseph Gay for the accused.

Cur. Adv. Vult.

Thean J. (delivering the judgment of the court): The accused, Lau Chi Sing, is charged with having trafficked in controlled drugs by transporting 242.85 grammes of diamorphine from Ghim Peng Hotel, Geylang Road, to Singapore Changi Airport between 7.30 p.m. and 7.55 p.m. on October 16, 1984. The charge against him is as follows:

"You, Lau Chi Sing, are charged that you, on or about the 16th day of October 1984, at between 7.30 p.m. and 7.55 p.m., in Singapore, did traffic in a controlled drug specified in Class A of the First Schedule to the Misuse of Drugs Act, Cap. 185 (1985 Revised Ed.) to wit, by transporting 242.85 grams of diamorphine from Ghim Peng Hotel, Geylang Road to Singapore Changi Airport in N.T.U.C. taxi No. SH 8477M, without any authorization under the said Act or the regulations made thereunder, and you have thereby committed an offence under section 5(a) and punishable under section 33 of the Misuse of Drugs Act (Cap. 185) Revised Edition 1985."